

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1020 OF 2005

MISS FAHMIDAH SHIRIN INAYAT & ANR... PETITIONERS

Vs.

SMT. SUMAN PRABHAKAR HEGDE ... RESPONDENTS

Mr. M. J. Jamdar for petitioners

Ms. Pratibha R. Ghorpade for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-19/4/2005

P.C.

Rule. Respondents waive service. By consent of the parties taken up for hearing forthwith.

2. The petitioners are original opponents. Respondent Smt. Hegde is the original applicant. She has filed the instant application through her power of attorney holder Mrs. Madhavi Prabhakar Karandikar.

3. In this writ petition, the petitioners have challenged the order dated

16/12/04 passed by the Additional Commissioner Pune Division in Revision Application No. 408 of 2004. For the sake of convenience the parties are referred to in this judgment as per their status in the trial court.

4. A few facts which give rise to the petition may have to be stated. The son of the applicant one Gokul Prabhakar Hegde was the original owner of the suit flat. He died on 5/7/99 intestate. His mother i.e. the applicant Smt. Hegde is his only heir. She thus succeeded to the suit flat.
5. It is the case of the applicant that the opponents were in need of suit premises for starting a play school at Pune. They met the applicant's son, negotiations started and, the applicant's son gave the suit flat to the opponents under the leave and licence agreement dated 1/5/96. The suit flat was to be used for residential purpose. Rs.50,000/- was agreed to be the security deposit and the licence fee was agreed at Rs.5,000/- per month. After the expiry of the first leave and licence agreement another leave and licence agreement was executed on 1/6/98 on the same terms.
6. It is the case of the applicant that the opponents created nuisance in the society. The members of the society complained. The licence came to an end on 30//4/99. The opponents did not vacate the suit flat. According to the applicant her son was ill. He could not take action to evict the opponents. The opponents continued to occupy the suit premises. They paid compensation upto June, 1999. However, they were in arrears of

compensation thereafter. The applicant demanded compensation till 28/2/03 amounting to Rs.2,30,000/-. However, the opponent failed to comply, therefore, the application came to be filed for eviction, possession of the suit flat and for arrears. The opponents denied the case of the applicant. They contended that the agreement dated 1/6/98 is not a registered leave and licence agreement and hence it is not binding on them. They denied the allegations of nuisance. They contended that the suit flat was given to them for commercial purpose on rent and, therefore, the application cannot be filed under Section 42 of the Maharashtra Rent Control Act 1999, as it is not maintainable.

7. Before the competent authority the applicant examined her power of attorney holder one Shridhar Kamat and Shri Kiran Suslade . The opponents did not adduce any evidence. They only relied on documentary evidence. The Competent Authority by its order dated 22/6/04 dismissed the application holding that it had no jurisdiction to entertain the said application.

8. A revision was carried from the said judgment and order being Revision Application No. 408 of 2004 before the Commissioner, Pune Division at Pune. By the impugned order the commissioner allowed the revision application. He set aside the order passed by the competent authority. The competent authority was directed to take action to evict the licensee hence

this writ petition.

9. I have heard at some length Mr. Jamdar, learned counsel appearing for the petitioner. He contended that the commissioner has wrongly set aside the order passed by the competent authority. He submitted that it is clear from the leave and licence agreement that the premises were given to the opponents to conduct play school. The premises were thus given for commercial purpose.

10. He submitted that under Section 24 of the Maharashtra Rent Control Act, 1999, the competent authority will get jurisdiction to entertain an application only if under the leave and licence agreement the premises are given on licence for residence. If they are given for commercial purposes an application under Section 24 read with Section 43 of the Maharashtra Rent Control Act cannot be filed. He submitted that the competent authority has correctly dismissed the application and the revenue authority was in error in allowing the revision application. He, therefore, submitted that the impugned order deserves to be set aside.

11. Mr. Jamdar stated that the opponents have deposited Rs.2,95,000/- towards compensation and Rs.2,64,953/- towards maintenance and property taxes and other expenses upto September, 2004. If this is true the record will bear it out.

12. I have also heard the learned counsel for the respondent.

13. Section 24 of the Maharashtra Rent Control Act, so far as it is relevant reads thus:

“24. Landlord entitled to recover possession of premises given on licence on expiry.

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.”

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the

rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3)

Explanation:- For the purposes of this section,-

(a)

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

14. It is clear from a bare reading of this section that what is contemplated is giving of premises on licence for residence. Clause (b) of the Explanation states that an agreement of licence in writing shall be conclusive evidence of the fact stated thereon. Section 43 of the said Act provides for the special procedure for disposal of this application.

15. There can be no dispute about the fact that in the present case the premises were given for the purpose of conducting a play school. That is clearly evident from a bare reading of the leave and licence agreement. In my opinion the Commissioner has wrongly construed the clauses of the said agreement. It was also not right for him to conclude that if the opponents claim that the premises were to be used for commercial purpose since they have not obtained any such permission for running classes from the Co-operative Housing Society as well as from the

Municipal Corporation second leave and licence agreement dated 1/6/98 becomes void and illegal. It was not open for the Commissioner to go into this aspect at all. All that he had to do was to find out whether under the leave and licence agreement the premises were given to the opponents for residence or for commercial purpose. The agreement of licence in writing is conclusive evidence of the facts stated therein. If the required permission was not obtained it is for the Society or the Municipal Corporation to look into that aspect.

16. In this connection it will be useful to refer to the judgment of this court in **Jasmeet Hoon v. Rita Johar (Smt.) & Anr., 2000 (Supp.) Bom.C.R. 866.** In that case this Court was considering the provisions of Section 13-A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The said provisions are similar to the provisions of Section 24 of the said Act. It was observed in this case that no amount of evidence could nullify the operation of agreement as Section 13-A(2) itself excludes evidence on this point. Section is special rule of evidence and it is not permissible for the Court to go behind the document. It was, therefore, improper for the commissioner to go into the question of validity of the said agreement because the society's permission was not obtained. Once the execution of the leave and licence agreement is established and it is found that there is a clause in the agreement that the

premises are given for play school then the Commissioner ought to have held that the instant application was not maintainable. The applicant, therefore, will have to follow such other remedy as may be available to her but certainly not the one which she has followed in the instant case.

17. In view of this, the impugned judgment and order dated 6/12/04 is quashed and set aside. It would be, however, open to the applicant to follow such other remedy as may be available to her. Petition disposed of.

18. Parties to act on authenticated copy of this order.

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